

Attorney Docket No. 14836-49926

MORRIS, MANNING & MARTIN, LLP

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: *"Medium and Method for Measuring the Efficacy of a Tumour Therapy."*

The specification of which

- a. ☐ is attached hereto
b. ☒ was filed on May 6, 2005, as application serial no.10/534,268, claiming priority to PCT/EP03/12428, filed 6 November 2003.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

- a. ☐ no such applications have been filed.
b. ☐ such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)
Germany	102 51 879.3	7 November 2002	
ALL FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)
PCT/EP03/12428	6 November 2003	

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (Day, Month, Year)

I acknowledge the duty to disclose information that is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (reprinted below):

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;
- or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

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I understand that the production of this document, and any review of it, is subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552, and any review of it is subject to the provisions of the Privacy Act, 5 U.S.C. 552a, and any review of it is subject to the provisions of the Access to Information Act, R.S.C. 1985, c. 42, s. 19.

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2	Small Business of Foreign	Foreign Name BOATWORK	First Given Name Alphonse	Small Business Name BOATWORK
3	Business of Foreign	City St. Louis MO, MO	State or Foreign Country Missouri	Country or Foreign Country Missouri
4	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
5	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
6	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
7	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
8	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
9	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
10	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
11	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
12	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
13	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
14	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
15	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
16	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
17	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
18	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
19	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri
20	Business of Foreign	Address Cherokee - 900 E. 1st St. S	City St. Louis	Country or Foreign Country Missouri

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+49 89 5599949 S.04/04

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I hereby appoint the following attorney(s) and/or patent agent(s) concerned herewith the following customer number to prosecute this application and to conduct all business in the Patent and Trademark Office:

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I hereby authorize them to act and rely on instructions given and communications directed with the person/agent/attorney/firm/organization who/which first sends/uses this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Martin, Manning & Martin, LLP to the contrary.

I understand that the execution of this document, and the giving of a power of attorney, does not in itself establish an attorney-client relationship between the undersigned and the law firm Martin, Manning & Martin, LLP, or any of its attorneys. Please direct all correspondence in this case to Tim Thompson, Esq., of Martin, Manning & Martin, LLP at the address associated with the following customer number:

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that upon willful false statements may jeopardize the validity of the application or any patent issued thereon.

2	Full Name of Inventor	Family Name	First Given Name	Second Given Name
		HABARTH	Alexander	
6	Residence & Citizenship	City	State or Foreign Country	Country of Citizenship
		Munich	Germany	Germany
1	Mailing Address	Address	City	State & Zip Code/Country
		Carl-Neuberg-Strasse 2	Munich	80334 Germany
Signature of Inventor is		Date		
X		10 April 2006		
3	Full Name of Attorney	Family Name	First Given Name	Second Given Name
		WATZEMANN	Frank	Christian
6	Residence & Citizenship	City	State or Foreign Country	Country of Citizenship
		Munich	Germany	Germany
2	Mailing Address	Address	City	State & Zip Code/Country
		Reichenbachstrasse 14	Munich	80469 Germany
Signature of Attorney is		Date		
X		10 April 2006		
1	Full Name of Inventor	Family Name	First Given Name	Second Given Name
		KUJCHER	Frank	Christian
6	Residence & Citizenship	City	State or Foreign Country	Country of Citizenship
		Munich	Germany	Germany
2	Mailing Address	Address	City	State & Zip Code/Country
		Reichenbachstrasse 14	Munich	80469 Germany
Signature of Inventor is		Date		
X		10 April 2006		

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